BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GARY D. KINCAID	)	
Claimant	)	
VS.	)	
	)	Docket No. 241,791 & 241,792
OVERNITE TRANSPORTATION COMPANY	)	
Respondent	)	
Self-Insured	)	

ORDER

Respondent appealed Administrative Law Judge Steven J. Howard's August 20, 1999, preliminary hearing Order.

ISSUES

The Administrative Law Judge granted claimant's preliminary hearing requests for medical treatment and temporary total disability benefits. On appeal, respondent contends claimant should be denied the requested benefits. Respondent argues claimant failed to prove he suffered a work-related accidental injury on June 21, 1998, while working for the respondent. Further, respondent contends the claimant failed to serve a timely written claim for compensation on respondent for the June 21, 1998, accident.

But claimant contends the Administrative Law Judge's preliminary hearing Order should be affirmed. Claimant asserts he aggravated a preexisting low-back injury when he lifted a roll door at work on June 21, 1998. Additionally, claimant argues that the Injury Consent form he signed on June 24, 1998, and the Family Medical Leave Request form he signed on August 28, 1998, satisfies the written claim statutory requirements.[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

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[1] *See* K.S.A. 44-520a.

The Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed.

After the June 21, 1998, lifting incident, the next day claimant sought medical treatment on his own at St. Luke's Northland Hospital emergency department. Claimant gave the examining physician a history of a 1996 work-related accident. But he also reported he aggravated that injury at work earlier in the week. Now he had unbearable pain in his right low back radiating down his right leg. The examining physician diagnosed claimant with a lumbosacral sprain, prescribed medication, and released to him see his family physician.

Respondent then sent claimant for medical treatment to Occupational Medicine Associates on June 24, 1998. Claimant gave a history of hurting his low back at work on June 21, 1998, while lifting a roll door. Claimant was diagnosed with a lumbar strain, prescribed pain medication, and physical therapy. He was released to return to work with limitations.

Before claimant could attend the physical therapy sessions, respondent notified claimant it was denying claimant medical treatment under workers compensation. The respondent told claimant if he needed further medical treatment he had to make a claim under his medical insurance. Claimant attempted to continue to work but had to leave work on July 27, 1998, and he has not returned to any type of employment.

Claimant's family physician referred him for further medical treatment to orthopedic surgeon Roger P. Jackson, M.D. The doctor diagnosed claimant with right L5-S1disc herniation and right S1 radiculopathy. He treated claimant conservatively from August 10, 1998, through January 25, 1999.

The Appeals Board concludes that claimant's testimony, coupled with the medical records admitted into evidence at the preliminary hearing, proves claimant aggravated a preexisting low-back condition when he lifted the roll door at work on June 21, 1998. When a worker has a preexisting condition and the preexisting condition is either aggravated, accelerated, or intensified by another on-the-job accident, the worker is entitled to compensated for the resulting disability.[2]

The Appeals Board acknowledges the evidence indicates claimant remained symptomatic after his June 30, 1996, accident. But the record as a whole proves claimant's preexisting low-back injury worsened after the June 21, 1998, lifting incident. In fact, it worsened to the point that claimant could no longer work after July 27, 1998. Where before this lifting incident, claimant was able to perform his regular work duties.

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[2] *See* Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 336, 678 P.2d 178 (1984).

When the respondent referred claimant for medical treatment to Occupational Medicine Associates, respondent had claimant complete an Injury Consent form. That form was offered and admitted into evidence at the preliminary hearing. The form is dated June 24, 1998, and is signed by both claimant and Rusty Darbby, a representative of the respondent. The information contained on the form includes the June 21, 1998, accident date; notes that the part of the body affected was the back, hip, and leg; and contains a description of the accident as lifting roll door in trailer.

Additionally, while claimant was off work and receiving medical treatment on his own, respondent required claimant to complete and sign, along with his treating physician and a respondent's representative, a Family Medical Leave Request form. This form was required to be submitted to the respondent every 30 days. One of those forms dated August 28, 1998, was offered and admitted into evidence at the preliminary hearing. Part of the information requested on the form is whether or not the leave was for a job-related injury. The form has the box checked that indicates job-related injury.

A written claim for compensation, as prescribed K.S.A. 44-520a, need not take on any particular form so long as it is in fact a claim.[3] The Appeals Board concludes, when both of the above described forms are considered together, they meet the requirements of the written claim statue.[4]

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Steven J. Howard's August 20, 1999, preliminary hearing Order should be, and it is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Kip A. Kubin, Overland Park, KS
Jeff S. Bloskey, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

[3] *See* Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973).

[4] See *K.S.A.* 44-520a.